

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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UNITED STATES OF AMERICA,

21-CR-541-03 (CM)

-v-

ADIEL PEGUERO,

ORDER

Defendant.

McMahon, J.:

On September 27, 2022, Peguero was sentenced to a term of 96 months' imprisonment (a below Guidelines variance sentence), for his involvement in a conspiracy to distribute and possess with the intent to distribute fentanyl and heroin.

Before the Court is Peguero's *pro se* motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2), in light of Amendment 821 to the United States Sentencing Guidelines Manual.

The United States Probation Department has conducted of review of defendants who are currently incarcerated and who might be eligible for a sentencing reduction, pursuant to Amendment 821 to the United States Sentencing Guidelines Manual. Amendment 821 amended the Guidelines in two respects: (1) Part A amends Guidelines § 4A1.1, by reducing from two points to one point the upward adjustment for offenders who committed the instant offense while under any criminal sentence, and by limiting this adjustment to defendants who received seven (7) or more criminal history points; and (2) Part B, amends Guidelines § 4C1.1, by providing a 2-level offense level reduction for offenders with zero (0) criminal history points who meet specified eligibility criteria. The Sentencing Commission made these amendments retroactive effective November 1, 2023.

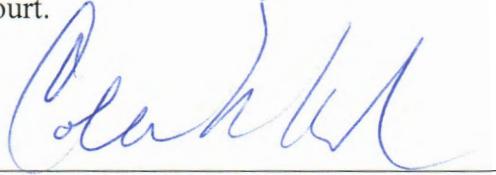
The Probation Department has not included Peguero on its list of defendants it has determined to be eligible for a sentencing reduction under Amendment 821.

Although Peguero would now receive one fewer criminal history point under Part A of Amendment 821 (reducing from two points to one point the upward adjustment for his having committed the instant offense while under a criminal sentence), which would effectively lower his Criminal History Category from III to II, his amended Guidelines range (121 to 151 months') is still greater than the 96 months' sentence the Court originally imposed. Under U.S.S.G. § 1B1.10(b)(2)(A), the court is not permitted to reduce a defendant's term of imprisonment "to a term that is less than the minimum of the amended guideline range." Accordingly, Peguero is precluded from a sentence reduction under Amendment 821.

The motion is denied.

The Clerk is directed to terminate the motion at 21 CR 541 (CM), ECF Document 88.

This constitutes the decision and order of the court.



Colleen McMahon
United States District Judge

Dated: April 16, 2024
New York, New York